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In re Application of	:	
BEDA, Nataliya Vladimirovna et al.	:	DECISION ON
US Application No.: 10/069,971	:	
PCT Application No.: PCT/RU00/00362	:	PETITION
Int. Filing Date: 11 September 2000	:	
Priority Date: 10 September 1999	:	UNDER
Attorney's File Reference: P67693US0	:	
For: METHOD FOR MODULATING THE	:	37 CFR 1.47(a)
METABOLISM OF NITROGEN OXIDES,	:	
COMPOSITIONS THEREFOR (AND	:	
VARIANTS) AND METHOD FOR	:	
ACTING ON A PATIENT'S ORGANISM	:	
NECESSITATING THE METABOLISM	:	
OF NITROGEN OXIDES TO BE	:	
CORRECTED	:	

This decision is in response to applicant's "PETITION UNDER 37 CFR 1.47(b)", filed 16 December 2002, which is being treated as a petition under 37 CFR 1.47(a) requesting acceptance of the application without the signatures of co-inventors Ruslan Robertovich Rafikov (Rafikov) and Olga Valerievna Rafikova (Rafikova). The \$130.00 petition fee has been paid.

BACKGROUND

On 11 September 2000, applicants filed international application number PCT/RU00/00362, which claimed a priority date of 10 September 1999. A demand for international preliminary examination was filed on 16 March 2001. Accordingly, the thirty-month period for paying the basic national fee in the United States of America expired at midnight on 11 March 2002 since 10 March 2002 was a Sunday.

On 11 March 2002, the applicants filed a transmittal letter for entry into the national stage in the United States of America under 35 USC 371, which was accompanied by, inter alia, the basic national fee and the fee for filing the oath or declaration later than 30 months from the priority date. No oath or declaration of the inventors was included.

On 14 May 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements which indicated, inter alia, that an oath or declaration of inventorship must be furnished by 2 months from the mailing date of the notification but that extensions of time were available under 37 CFR 1.136(a).

On 11 June 2002, the applicants filed, inter alia, a declaration and power of attorney listing all of the inventors and including the signatures of all of the inventors except Rafikov and Rafikova.

On 11 July 2002, the DO/EO/US mailed a Notification of Defective Response indicating that the declaration was defective because it was not executed by Rafikov and Rafikova. The notification indicated that a properly executed declaration was due within one month from the date of this notification or within the time remaining for response set forth in the Notification of Missing Requirements, whichever is longer.

On 16 December 2002, the applicants filed, inter alia, the following papers:

- 1) a petition under 37 CFR 1.47(a) and the required \$130.00 petition fee;
- 2) a declaration of agent Vladimir I. Biriulin (Biriulin) stating that, inter alia, a package of documents including the specification, claims, and declaration and power of attorney for signature were sent to Rafikov and Rafikova but that on 19 November 2002 a letter was received from Rafikov and Rafikova stating that they would not sign the declaration;
- 3) a copy of a letter from Biriulin to Rafikov and Rafikova, dated 09 October 2002, indicating that a patent application based on PCT/RU00/00362, as it was filed with the US Patent Office, was enclosed and that the declaration was to be signed;
- 4) a copy of a letter from Rafikov and Rafikova to Biriulin, dated 19 November 2002, indicating that Rafikov and Rafikova would not sign the application; and
- 5) a request and \$720 payment for a 4-month extension of time under 37 CFR 1.136(a) and 1.17(a)(4) including an authorization to charge the applicants' deposit account for any additional fees required to "keep this case alive".

DISCUSSION

37 CFR 1.47(a) states:

If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

Further, MPEP 409.03(e) entitled "Statement of Last Known Address" states:

An application filed pursuant to 37 CFR 1.47 must state the last known address of the nonsigning inventor.

That address should be the last known address at which the inventor customarily receives mail. See MPEP § 605.03. Ordinarily, the last known address will be the last known residence of the nonsigning inventor.

Inasmuch as a nonsigning inventor is notified that an application pursuant to 37 CFR 1.47 has been filed on his or her behalf, other addresses at which the nonsigning inventor may be reached should also be given.

Applicants have not stated the last known address of non-signing co-inventors Rafikov and Rafikova. A statement of the last known address of Rafikov and Rafikova is required in accordance with 37 CFR 1.47(a).

The Notification of Defective Response mailed 11 July 2002 set a time limit for response of one month from the date of the notification or within the time remaining for response set forth in the Notification of Missing Requirements, whichever is longer. Applicants' response of 16 December 2002 included a request and \$720 payment for a 4-month extension of time under 37 CFR 1.136(a) and 1.17(a)(4). However, since the applicants' response was not filed until 16 December 2002, a \$980 5-month extension of time under 37 CFR 1.17(a)(5) is required to avoid abandonment of the application. Accordingly, applicants' deposit account has been charged an additional \$260 to cover the requisite \$980 fee under 37 CFR 1.17(a)(5) for a 5-month extension of time.

CONCLUSION

For the above reasons, the petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

Applicants' deposit account number 06-1358 has been charged an additional \$260 to cover the fee for a 5-month extension of time under 37 CFR 1.17(a)(5).

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response to this decision will result in ABANDONMENT of the application.

Applicant is advised that, as of May 1, 2003, the Office changed its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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A handwritten signature in black ink, appearing to read 'Richard Cole', written in a cursive style.

Richard Cole
PCT Legal Examiner
PCT Legal Office